APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT FILED APRIL 6, 2004

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE; IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 6th day of April, two thousand four.

Present: HON. THOMAS J. MESKILL,
HON. ROBERT A. KATZMANN,
HON. RICHARD C. WESLEY,
Circuit Judges

Appendix A

SYED SHUAIB,

Plaintiff-Appellant,

-v-

NEW YORK CITY HOUSING AUTHORITY, CONSTRUCTION DEPARTMENT,

Defendant-Appellee,

Appeal from the United States District Court for the Southern District of New York (Cedarbaum, *J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court be and it hereby is AFFIRMED.

Syed M. Tariq Shuaib, plaintiff-appellant appeals the district court's dismissal of Shuaib's complaint for failure to prosecute and denial of his motion for reconsideration.

Having thoroughly reviewed the record, we find that the district court committed no error. Accordingly, the judgment of the district court is AFFIRMED.

FOR THE COURT:
ROSEANN R. MacKECHNIE, CLERK
By: s/ Lucille Carr

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK DATED OCTOBER 18, 2002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

97 Civ. 6955 (MGC)

SYED M. TARIQ-SHUAIB

Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY,
CONSTRUCTION DEPARTMENT,

Defendant.

ORDER

CEDARBAUM, J.

Plaintiff's motion to reopen this case under Fed. R. Civ. P. 60 is denied. This action was administratively closed on September 19, 2000 because plaintiff had failed to pursue it for over two years. Now, two more years have elapsed without any action by plaintiff.

Plaintiff does not contend that there was a clerical error in the closing of this action. Rather, he seems to be arguing only that his inaction constitutes "mistake, inadvertence, surprise, or excusable neglect," within the meaning of

Appendix B

Fed. R. Civ. P. 60(b)(1). Fed. R. Civ. P. 60(b)(1) requires that a motion to reopen a case be filed not more than one year after the action is closed. Because more than two years have elapsed since this action was closed, Fed. R. Civ. P. 60(b)(1) is inapplicable.

Plaintiff asserts that his failure to take any action in this case for four years was due to his belief that his attorney was pursuing the matter. A previous action filed by plaintiff against the same defendant in 1995 was dismissed because of continuing delay and for plaintiff's failure to prosecute his claims. *Shuaib v N.Y.C. Housing Auth et al.*, 95 Civ. 11014 (S.D.N.Y.), *aff'd*, Second Circuit, February 19, 1998, summary order. Plaintiff was therefore on notice that inaction could result in dismissal of an action. Moreover, the inaction in this case has severely prejudiced the defendant. Records of job postings, interviews, and promotions, as well as the files of the Construction Department in which plaintiff was employed, have been destroyed as a result of the events of September 11, 2001.

Accordingly, plaintiff has not provided sufficient reason for reopening the case under Fed. R. Civ. P. 60 (b) (6), and this action is dismissed for failure to prosecute under Fed. R. Civ. P. 41(b).

SO ORDERED.

Dated: New York, New York
October 18, 2002

s/ Miriam Goldman Cedarbaum
MIRIAM GOLDMAN CEDARBAUM
United States District Judge

APPENDIX C — MINUTE ORDER PURSUANT TO MEMORANDUM FROM THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS DATED JUNE 15, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1:97cv6955(MGC)
(Original filed in)
2:93cv6688(CSH)

Shuaib,

Plaintiff

-against-

NYC Housing Authority,

Defendant

MINUTE ORDER PURSUANT TO MEMORANDUM FROM THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS; DATED JUNE 15TH, 1973

The attached list of cases having been pending for more than three years, all presently contemplated proceedings having been completed, and there having been no action for more than twelve months, there appears to be no further reason at this time to maintain these files as open for statistical purposes, the Clerk is instructed to complete a JS-6 closing report for each case.

Appendix C

Nothing contained in this minute order shall be considered a dismissal or disposition of these matters, and should further proceedings in them become necessary or desirable, any party may initiate it in the same manner as if this minute order had not been entered.

SO ORDERED: Sept 19, 2000
DATED: New York, N.Y.

MICHAEL B. MUKASEY
Chief Judge